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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,074	04/13/2004	Dan L. Hankinson	61992	3984

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EXAMINER

COCKS, JOSIAH C

ART UNIT PAPER NUMBER

3749

DATE MAILED: 08/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/823,074

Applicant(s)

HANKINSON, DAN L.

Examiner

Josiah Cocks

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. - 5 pages
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 12, 14 and 20.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


Josiah Cocks
Primary Examiner
Art Unit 3749

Item 7. Appended Explanation of the Rejected Claims

Response to Amendment

1. Receipt of applicant's amendment filed 8/8/2006 is acknowledged. By this amendment, applicant cancels claims 1, 5, 8, 9, and 10. Claims 12, 14, and 20 are pending. This amendment has been entered as it is considered to simplify the issues for appeal.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 12, 14, and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In regard to claims 12, 14, and 20, neither applicant's specification nor any of the Figures illustrated a food roasting apparatus as recited first in the amendment filed 3/20/2006 that includes both the structure of the trigger assembly (including all the elements of the linkage pushrod, rotating arm, etc., see Figs. 5a -7) in combination with a sleeve (i.e. 140) coupled to the rod (110) for slidable movement, and a post and clamp assembly (150) for ground penetration and releasably capturing the sleeve (see Figs. 1a-3c). There appears to be no discussion or

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illustration within applicant's original disclosure as to how the food roasting apparatus incorporating all of these limitations would be structured or how the device would operate. Accordingly, applicant's amendment incorporating a device having these structures is not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention and appears to introduce new matter into the specification.

Response to Arguments

4. Applicant's arguments filed 8/8/2006 have been fully considered but they are not persuasive. Applicant has argued that the recitation in applicant's specification that the embodiment (200) appearing in Figs. 5a through 7 "includes a construction substantially similar to the construction previously described except as specifically noted below" (Applicant's specification, p. 8, lines 12-13), is sufficient to disclose that the sleeve (140) and post and clamp assembly previously described would be incorporated in this embodiment. The examiner does not agree.

In response, the examiner notes that the operation of the sleeve (140) introduced in the embodiment (100) of applicant's invention are described by applicant as follows:

A sleeve 140 is coupled to the rod 110 and slides and rotates therealong. This allows the user to hold the sleeve 140 with one hand while rotating the handle 120 with the other hand. Alternately, the sleeve 140 may be attached to a stand 150 (Fig. 1a) to provide a hands-free way of holding the food roasting apparatus 100 over the fire. The sleeve 140 is preferably constructed of a material that is slow to conduct heat. The stand 150 includes a stake 152 that can be firmly planted in the ground and a clamp 153 composed of a slider 154, two clamp plates 156, and a bolt 158 (Fig. 3a).

In use, food is placed in basket 130 through open proximal end 134. The basket 130 is then placed over a heat source such as an open fire or grill. The user can hold the handle 120 and the sleeve 140, or the stand 150 can be used to support the rod 110. If the stand 150 is used, the stake 152 is planted firmly in the ground near the heat source. The slider 154 is coupled to the stake 152, and the slider 154 can slide and rotate therealong. The sleeve 140 is placed between the clamp plates 156, and the bolt 158 passes through the clamp plates 156 and threads into the slider 154. The bolt is then tightened against the stake 152, holding the sleeve 140 in place (Figs. 3a through 3c).

When the food needs to be rotated, the user turns the handle 120, which rotates the rod 110 about the rod longitudinal axis 119 and causes the basket 130 to rotate about the basket longitudinal axis 139. Since the rod longitudinal axis 119 is inline with the basket longitudinal axis 139, the basket 130 does not rise or fall when rotated; this results in minimal effort being required and the food cooking evenly. After the food is cooked and removed from the heat source, the user tilts the basket 130 upwards, causing the food to slide out through open proximal end 134 to a predetermined location. After the food roasting apparatus 100 cools, the basket 130 can be removed from the rod 110 for transport or cleaning. The basket will preferably fit in a standard dishwasher and be dishwasher-safe, though it may also be cleaned by hand.

(See applicant's specification, p. 7, line 10 through p. 8, line 10)

In the embodiment (100) shown in Figs. 1a and 1b, sleeve (140) is described as being able to slide and rotate along rod (110). However, it is not clear how the sleeve (140) would be

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arranged on the embodiment (200) shown in Figs. 5a through 7 in order to be able to slide and rotate along rod (110) with the presence of pushrod (272). Would the sleeve (140) be arranged to encompass this pushrod (272) as well as rod (110)? If so, how is the sleeve (140) still capable of sliding along rod (110). Alternatively, would the sleeve (140) be arranged beneath the pushrod (272)? If so, how is the sleeve mounted so that the pushrod (272) does not interfere with the sliding and rotation of the sleeve? Further, as shown in Fig. 3a, the contour of the clamp plates (156) appear to be structured follow the contour of the sleeve (140) in order to tightly grasp the sleeve. If the pushrod (272) is arranged above the sleeve, how then can the sleeve be clamped to stake (150)? The clamp plates (156) do not appear capable of receiving both the sleeve (140) and pushrod (272). Would the pushrod interfere with such clamping? Further, if clamped in this manner, how would the clamping of pushrod (272) allow for rotation of the rod (110) by the handle (120) as described on page 8 of applicant's specification.

Applicant's disclosure as originally filed does not adequately address the questions of how the sleeve (140) would be arranged in the embodiment (200) shown in Figs. 5a through 7. The statement in the specification that the embodiment (200) appearing in Figs. 5a through 7 "includes a construction substantially similar to the construction previously described except as specifically noted below" (Applicant's specification, p. 8, lines 12-13) does not convey to a person of ordinary skill in the art the structure and configuration the sleeve (140) that would provide for the presence of the pushrod (272). Either the structure or configuration of the sleeve (140) in this embodiment would necessarily be distinct from that shown in embodiment (100) to address the problems noted by the examiner in the preceeding paragraph.

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Accordingly, as the claims include limitations that appear to describe a structure that mixes the two embodiments (100 and 200) that arose after the original filing of the application and during the subsequent prosecution of the application, the claims do not comply with the requirements of 35 USC 112, first paragraph.